



DEPARTMENT OF COMMERCE

Patent and Trademark Office

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Native American Tribal Insignia Database

AGENCY: United States Patent and Trademark Office, Department of Commerce.

ACTION: Notice of information collection; request for comment.

SUMMARY: The United States Patent and Trademark Office (USPTO), as required by the Paperwork Reduction Act of 1995, invites comments on the extension and revision of an existing information collection: 0651-0048 Native American Tribal Insignia Database. The purpose of this notice is to allow 60 days for public comment preceding submission of the information collection to OMB.

DATES: To ensure consideration, comments regarding this information collection must be received on or before [INSERT DATE 60 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Interested persons are invited to submit written comments by any of the following methods. Do not submit Confidential Business Information or otherwise sensitive or protected information.

- *Federal Rulemaking Portal:* <https://www.regulations.gov>.
- *Mail:* Justin Isaac, Office of the Chief Administrative Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Catherine Cain, Attorney Advisor, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450; by telephone at 571-272-8946; or by email at Catherine.Cain@uspto.gov with “0651-0048 comment” in the subject line.

Additional information about this information collection is also available at <https://www.reginfo.gov> under “Information Collection Review.”

SUPPLEMENTARY INFORMATION:

I. Abstract

The Trademark Law Treaty Implementation Act of 1998¹ (Pub. L. 105-330, section 302, 112 Stat. 3071) required the USPTO to study issues surrounding the protection of the official insignia of federally and state-recognized Native American tribes under trademark law. The USPTO conducted the study and presented a report to the House and Senate Judiciary Committees on November 30, 1999. One of the recommendations made in the report was that the USPTO create and maintain an accurate and comprehensive database containing the official insignia of all federally and state-recognized Native American tribes. In accordance with this recommendation, the Senate Committee on Appropriations directed the USPTO to create this database. The USPTO published the final procedures for establishing and maintaining the tribal insignia database in the *Federal Register* on August 24, 2001 (66 FR 44603).²

The USPTO database of official tribal insignias provides evidence of what a federally or state-recognized Native American tribe considers to be its official insignia. Section 2(a) of the Trademark Act, 15 U.S.C. section 1052(a), disallows the registration of marks that falsely suggest a connection with a non-sponsoring person or institution, including a Native American tribe. The database thereby assists trademark examining attorneys in their examination of applications for trademark registration by serving as a reference for determining the registrability of a mark that may falsely suggest a connection to the official insignia of a Native American tribe. The database, included within Trademark Electronic Search System (TESS),³ is available to the public on the

¹ <https://www.uspto.gov/trademark/laws-regulations/trademark-law-treaty-implementation-act>.

² <https://www.federalregister.gov/documents/2001/08/24/01-21479/establishment-of-a-database-containing-the-official-insignia-of-federally-and-state-recognized>.

³ <https://www.uspto.gov/trademarks-application-process/search-trademark-database>.

USPTO website, and includes an online help program for using the system. More information about the program is available on the website at <https://www.uspto.gov/trademarks/laws/native-american-tribal-insignia>.

Tribes are not required to request that their official insignia be included in the database. The entry of an official insignia into the database does not confer any rights to the tribe that submitted the insignia, and entry is not the legal equivalent of registering the insignia as a trademark under 15 U.S.C. section 1051 *et seq.* The inclusion of an official tribal insignia in the database does not create any legal presumption of validity or priority, does not carry any of the benefits of federal trademark registration, and is not a determination as to whether a particular insignia would be allowed or refused registration as a trademark pursuant to 15 U.S.C. section 1051 *et seq.*

Requests from federally recognized tribes to enter an official insignia into the database must be submitted in writing and include: (1) a depiction of the insignia, including the name of the tribe and the address for correspondence; (2) a copy of the tribal resolution adopting the insignia in question as the official insignia of the tribe; and (3) a statement, signed by an official with authority to bind the tribe, confirming that the insignia included with the request is identical to the official insignia adopted by the tribal resolution.

Requests from state-recognized tribes must also be in writing and include each of the three items described above that are submitted by federally recognized tribes. Additionally, requests from state-recognized tribes must include either: (a) a document issued by a state official that evidences the state's determination that the entity is a Native American tribe; or (b) a citation to a state statute designating the entity as a Native American tribe.

The USPTO enters insignia that have been properly submitted by federally or state-recognized Native American tribes into the database and does not investigate whether the insignia is actually the official insignia of the tribe making the request.

This information collection includes the information needed by the USPTO to enter an official insignia for a federally or state-recognized Native American tribe into a database of such insignia. No forms are associated with this information collection.

II. Method of Collection

Electronically by email, mail, or hand delivery to the USPTO.

III. Data

OMB Control Number: 0651-0048.

Forms: None.

Type of Review: Extension and revision of a currently approved information collection.

Affected Public: State, Local, and Tribal Government.

Respondent's Obligation: Required to obtain or retain benefits.

Estimated Number of Annual Respondents: 5 respondents.

Estimated Number of Annual Responses: 5 responses.

Estimated Time per Response: The USPTO estimates that the responses in this information collection will take the respondents approximately 1 hour to complete, depending on the complexity of the situation and item, to gather the necessary information, prepare the appropriate document(s), and submit the information to the USPTO.

Estimated Total Annual Respondent Burden Hours: 5 hours.

Estimated Total Annual Respondent Hourly Cost Burden: \$301.

Table 1: Total Burden Hours and Hourly Costs to Tribal Government Respondents

Item No.	Item	Estimated Annual Respondents (a)	Responses per Respondent (b)	Estimated Annual Responses (a) x (b) = (c)	Estimated Time per Response (hours) (d)	Estimated Burden (hour/year) (c) x (d) = (e)	Rate ⁴ (\$/hour) (f)	Estimated Annual Respondent Cost Burden (e) x (f) = (g)
1	Request to Record an Official Insignia of a Federally Recognized Tribe	4	1	4	1	4	\$60.13	\$241
2	Request to Record an Official Insignia of a State-Recognized Tribe	1	1	1	1	1	\$60.13	\$60
	Totals	5	---	5	---	5	---	\$301

Estimated Total Annual Respondent Non-hourly Cost Burden: \$19. There are no maintenance costs, capital start-up costs, record keeping costs, or filing fees associated with this information collection. However, the USPTO estimates that the total annual (non-hour) cost burden for this information collection, in the form of postage, is \$19.

Postage

The USPTO estimates that 40% of the items in this information collection will be submitted in the mail. The USPTO estimates that the average postage cost for a mailed submission, using a Priority Mail 2-day flat rate legal envelope, will be \$9.35 and that approximately 2 submissions will be mailed to the USPTO per year. Therefore, the USPTO estimates that postage costs in this collection will be \$19.

IV. Request for Comments

The USPTO is soliciting public comments to:

- (a) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;
- (b) Evaluate the accuracy of the Agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- (c) Enhance the quality, utility, and clarity of the information to be collected; and

⁴ Bureau of Labor Statistic rate for lawyers in local government (23-1011 – Lawyers), plus 30% added for benefits and overhead (<https://www.bls.gov/oes/current/oes230000.htm>).

(d) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

All comments submitted in response to this notice are a matter of public record. The USPTO will include or summarize each comment in the request to OMB to approve this information collection. Before including an address, phone number, email address, or other personally identifiable information (PII) in a comment, be aware that the entire comment—including PII—may be made publicly available at any time. While you may ask in your comment to withhold PII from public view, the USPTO cannot guarantee that it will be able to do so.

Justin Isaac,

Information Collections Officer,

Office of the Chief Administrative Officer,

United States Patent and Trademark Office.

[FR Doc. 2023-04759 Filed: 3/7/2023 8:45 am; Publication Date: 3/8/2023]